IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1269 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHANDRASEKHAR OMKAR VARMA

Versus

COMMISSIONER OF POLICE FOR THE CITY OF AHMEDABAD

Appearance:

1. Special Civil Application No. 1269 of 2002

MR ANIL S DAVE for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/04/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 3-8-2002 passed by the

Police Commissioner, Ahmedabad City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, she cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner at length and learned AGP, Mr.S.J.Dave, for the respondents. I have also perused the material on record. According to learned advocate for the petitioner, the detenu has submitted a representation by R.P.A.D. to the authority through advocate on 22-1-2002. Producing copy of the reply sent by the authority to the detenu, he has contended that representation has been rejected by the authority on 30-1-2002, but same has been communicated to the detenu on 4-2-2002 and hence, there is a delay in deciding the representation and communicating the decision to the detenu. Copy of the reply sent by the authority to the detenu is ordered to be taken on record. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

He has submitted that the petitioner is a co-detenu of an offence wherein another detenu-Dipak Govindbhai Parmar has been released by this Court in Special Civil Application No.1240 of 2002 by the judgment and order

dated 26-4-2002 and hence, present detenu should also be granted same benefit.

4. In the present case, it appears that the detenu has sent the representation on 22-1-2002 to the authority and though it was rejected by the authority on 30-1-2002, same has been communicated to the detenu on 4-2-2002 and hence, there is a delay in deciding the representation and communicating the same to the detenu. However, no explanation has been putforward by the authority by filing an affidavit explaining satisfactorily the delay. Since no explanation has been putforth by the concerned authorities for the said delay, the order of detention is illegal and the same cannot be sustained. Since a co-detenu has been released by this Court, on the ground of parity also, present detenu is entitled to be released.

5. The petition is allowed. The impugned order of detention dated 3-8-2001 passed against the detenu is hereby quashed and set aside. The detenu Chandrasekhar Omkar Varma is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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